

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: APU	CCRB Case #: 201808122	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/28/2018 1:20 PM	Location of Incident: § 87(2)(b)	Precinct: 121	18 Mo. SOL 3/28/2020	EO SOL 11/12/2020	
Date/Time CV Reported Mon, 10/01/2018 2:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 10/01/2018 2:44 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincenzo Trabolse	07477	942882	121 PCT
2. POM Anthony Cimmino	11712	933693	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Pallotto	09796	964695	121 PCT
2. POM Michael Castiglia	11455	948760	121 PCT
3. POM Anthony Solitario	10846	955519	121 PCT
4. POM Paul Burns	13308	936267	121 PCT
5. POM Gregory Serrano	04400	957153	121 PCT
6. POM Kevin Geoghegan	25013	934916	121 PCT
7. POM John Cirelli	29062	944032	121 PCT
8. SGT Julia Griffin	01119	944614	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vincenzo Trabolse	Abuse: Police Officer Vincenzo Trabolse threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Vincenzo Trabolse	Abuse: Police Officer Vincenzo Trabolse entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
C.POM Vincenzo Trabolse	Force: Police Officer Vincenzo Trabolse used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Vincenzo Trabolse	Force: Police Officer Vincenzo Trabolse used a Taser against § 87(2)(b)	§ 87(2)(b)
E.POM Anthony Cimmino	Discourtesy: Police Officer Anthony Cimmino spoke discourteously to § 87(2)(b)	§ 87(2)(b)

### Case Summary

This case was deemed sensitive due to coverage it received by multiple local media outlets.

On October 1, 2018, § 87(2)(b) filed this complaint via the CCRB website on behalf of her son, § 87(2)(b) did not witness this incident.

On September 28, 2018, at approximately 1:20 p.m., multiple officers from the 121<sup>st</sup> Precinct, including PO Vincenzo Trabolse, responded to a 911 call regarding an assault at § 87(2)(b) in Staten Island. Upon arriving at the location, PO Trabolse went to § 87(2)(b) and knocked on the door. § 87(2)(b) responded and partially opened the door. PO Trabolse instructed § 87(2)(b) to exit the apartment, which he refused to do. PO Trabolse stated that he would call the NYPD's Emergency Services Unit (ESU) to "break down" the door if § 87(2)(b) did not open it (**Allegation A -Abuse of Authority: Threat to damage property, § 87(2)(g)**). § 87(2)(b) opened the door, and PO Trabolse entered the apartment (**Allegation B -Abuse of Authority: Entry of premises, § 87(2)(g)**).

PO Trabolse and additional officers pressed § 87(2)(b) onto a bed in the apartment and, after some struggle, placed § 87(2)(b) face-down on the bed. PO Trabolse instructed § 87(2)(b) to "give me your hands" and punched him three to four times on the right side of his torso (**Allegation C -Force: Physical force, § 87(2)(g)**). Soon after this, PO Trabolse retrieved his Conducted Electricity Weapon (CEW) from the bed, activated it in drive-stun mode, and pressed it against § 87(2)(b)'s shoulder (**Allegation D -Force: Nonlethal restraining device, § 87(2)(g)**).

§ 87(2)(b) was handcuffed and escorted out of the apartment. In the building stairwell, § 87(2)(b) said, "Shut the fuck up" to an officer. PO Anthony Cimmino said, "You shut the fuck up, you little shit. Get the fuck out of here" (**Allegation E -Discourtesy: Word, § 87(2)(g)**).

§ 87(2)(b) was arrested as a result of the incident and charged with § 87(2)(b), § 87(2)(a), 160.50  
(Board Review 01).

Video footage recovered in this case was recorded by § 87(2)(b)'s brother, § 87(2)(b) via his cell phone and officers involved via their Body-Worn Cameras (BWCs) and provided to the CCRB by the Richmond County District Attorney's office and the NYPD's Legal Bureau, respectively.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Vincenzo Trabolse threatened to damage § 87(2)(b)'s property.**

**Allegation (B) Abuse of Authority: Police Officer Vincenzo Trabolse entered § 87(2)(b) in Staten Island.**

It is undisputed that PO Trabolse threatened to summon ESU officers to the location and that he subsequently entered the apartment.

§ 87(2)(b) stated to the CCRB (Board Review 02) that after he opened the entry door to his apartment, PO Trabolse continued instructing him to exit the apartment, simultaneously stepping into the apartment interior. § 87(2)(b) refused to exit the apartment, stating that he had not done anything and that the officers did not have a warrant to enter his

home. PO Traborse grabbed hold of one of § 87(2)(b)'s arms (he did not recall which) and pulled it towards the exterior of the apartment. § 87(2)(b) turned his shoulder and half of his body away from PO Traborse, moving, not breaking away from PO Traborse's grasp, towards and up to the bed five feet behind him and the entry door. PO Traborse did not make additional contact with § 87(2)(b) during this process.

PO Traborse stated to the CCRB (Board Review 03) that he arrived at the location approximately five to six minutes after receiving the complaint, and he saw § 87(2)(b) who had a "swollen black eye" and who he thought to be the victim of the assault. PO Traborse briefly interacted with her and did not recall whether she provided him with information identifying the individual who assaulted her. PO Traborse walked to an interior stairwell, where the building superintendent stood and directed PO Traborse to the apartment in which the male who perpetrated the assault could be found by pointing towards the apartment and saying, "He's in there."

§ 87(2)(b) spoke with PO Traborse for approximately two to three minutes through a gap in the door, which was secured to the door jamb by a chain. PO Traborse could see § 87(2)(b) and his brother, § 87(2)(b) who PO Traborse recognized from prior interactions as a "Mara Salva" gang member, inside the apartment. PO Traborse did not recall whether a physical description of § 87(2)(b) had been provided to him as the alleged perpetrator of the assault and did not recall any specific information that led him to believe the alleged perpetrator was § 87(2)(b) and not § 87(2)(b). § 87(2)(b) told PO Traborse, "I didn't do anything."

PO Traborse threatened to have ESU officers "take" the door to § 87(2)(b)'s apartment and forcibly remove him from it because had he closed the door, he would have become a "barricaded" perpetrator wanted for assault, because such circumstances required ESU assistance, and for no other reason. After § 87(2)(b) opened the door, turned around and "fled" in that he moved, in a manner PO Traborse did not specify, towards the rear of the room, approximately four to five feet away from PO Traborse.

Due to being informed of the location of the alleged assault's perpetrator, PO Traborse considered him to be under arrest. Because of this and his not knowing whether § 87(2)(b) had moved into the apartment's interior with the intent of obtaining a weapon, PO Traborse walked into the apartment. PO Traborse did not obtain a warrant for § 87(2)(b)'s arrest because § 87(2)(b) was present, he entered the apartment, PO Traborse wished to ensure the safety of him and his partner, PO Nicholas Pallotto, and no other reason.

The Event Information for the 911 call in this incident (Board Review 14) shows that the caller stated that her foster daughter's boyfriend "is hitting her." The call makes no reference to either the presence or absence of weapons.

The aspects of BWC footage relevant to these allegations are captured and summarized in the Narrative Report in this case (Board Review 04). Based on the content of this footage, the investigation credits that PO Traborse entered § 87(2)(b)'s apartment with § 87(2)(b) directly facing and speaking to him and prior to PO Traborse initially making physical contact with him.

Officers may proceed without a warrant to effectuate an arrest within a home if exigent circumstances exist. In determining whether exigent circumstances are present, factors applied include the following: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause; (4) strong reason to believe that the suspect is in the premises being entered; (5) a

likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010) (Board Review 05).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Force: Police Officer Vincenzo Trabolse used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Vincenzo Trabolse used a Taser against § 87(2)(b)**

It is undisputed that PO Trabolse punched § 87(2)(b) three to four times on the right side of his body, and used his CEW against him.

§ 87(2)(b) stated that after officers pressed him, face-down, against a bed in the apartment and pulled his arms behind his back, he “wiggled” or “twisted” his shoulders back and forth, pulled his arms forward, and did not move in any other way.

PO Trabolse stated that after entering the apartment, he recognized a contrast between his 5’10” tall, 255-pound build and that of § 87(2)(b) who PO Trabolse approximated to be 5’0” tall and weighing 100 pounds. PO Trabolse moved § 87(2)(b) towards a bed. Without any assistance, PO Trabolse placed § 87(2)(b) chest first, onto the bed, where he handcuffed § 87(2)(b) s left hand after approximately two seconds. § 87(2)(b) s right arm was situated underneath his chest, which was pressed against the bed, and § 87(2)(b) did not produce this hand to be handcuffed. PO Michael Castiglia assisted PO Trabolse in a manner he only described as “helping control” § 87(2)(b)

In order to gain access to § 87(2)(b) s right arm and for no other reason, PO Trabolse punched § 87(2)(b) three times in the “meaty part” of his right arm, near his triceps and bicep muscles. § 87(2)(b) did not say or do anything in response.

When § 87(2)(b) did not produce his right arm, PO Trabolse used his CEW for approximately one second of one cycle against § 87(2)(b) because he, as a “big guy,” wished to be “as gentle as [he] could be” and not punch him any longer, because he did not wish to use his asp against a “small guy,” because he judged that the CEW was the “next level of force” and “best level of force” against § 87(2)(b) and for no other reason.

§ 87(2)(g)

Officers must use only the reasonable force necessary to gain control or custody of a subject, considering factors such as, but not limited to, nature and duration of the subject's actions, whether the subject actively resists custody, number of subjects in comparison to the number of members-of-service, and size, age, and condition of the subject in comparison to the member-of-service. NYPD Patrol Guide Procedure 221-01 (Board Review 06).

In the absence of usage in conjunction with a CEW's probe mode, drive-stun mode may be used as a countermeasure to gain separation between officers and the subject so that officers can consider another force option. Drive-stun mode should not be the primary method of use unless exceptional circumstances exist. A CEW should never be used in probe mode or drive-stun mode on a rear-cuffed prisoner. NYPD Patrol Guide Procedure 221-08 (Board Review 07).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Discourtesy: Police Officer Anthony Cimmino spoke discourteously to**

§ 87(2)(b)

Although PO Cimmino stated to the CCRB (Board Review 13) that he had no recollection of speaking discourteously to § 87(2)(b) based on the footage reflected in the Narrative Report that depicts that aspect of the incident from multiple perspectives, the investigation determined, firstly, that after § 87(2)(b) said, "Shut the fuck up," someone in

his vicinity immediately responded, “You shut the fuck up, you little shit. Get the fuck out of here.” Furthermore, the footage provides a perspective of the moments surrounding this statement, during which PO Cimmino and no other officer can be seen physically and verbally responding to § 87(2)(b) and the investigation therefore determined that PO Cimmino made these statements.

An officer, when making contact with members of the public, must act in a professional manner. NYPD Patrol Guide 203-09 (Board Review 08).

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- PO Trabolse has been a member-of-service for 12 years and has been a subject in nine CCRB complaints and 16 allegations, four of which were substantiated:
  - In 201307635, allegations of Abuse – Stop, Abuse – Frisk, and Abuse – Search (of person) were substantiated. The Board recommended Command Discipline, and the NYPD imposed Command Discipline A.
  - In 201411460, an Abuse – Vehicle search allegation was substantiated. The Board recommended Command Discipline A, and the NYPD imposed Command Discipline A.
  - § 87(2)(g)
- PO Cimmino has been a member-of-service for 15 years and has been a subject in 16 CCRB complaints and 32 allegations, six of which were substantiated:
  - In 201307635, allegations of Abuse – Stop and Abuse – Frisk were substantiated. The Board recommended Command Discipline, and the NYPD imposed Command Discipline A.
  - In 201401027, allegations of Abuse – Vehicle Stop, Discourtesy – Word, Discourtesy – Action, and Abuse – Retaliatory summons were substantiated. The Board recommended Charges, and the NYPD imposed the forfeiture of seven days as the result of an Administrative Prosecution Unit trial verdict.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.

- On May 17, 2019, a Notice of Claim inquiry was sent to the Office of the NYC Comptroller, and the results will be added to the case file upon receipt (Board Review 11).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Board Review 13).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date